

IN THE SUPREME COURT OF THE STATE OF DELAWARE

THOMAS A. MORGAN,	§
	§ No. 210, 2012
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 92S05729DI
	§
Plaintiff Below-	§
Appellee.	§

Submitted: June 18, 2012

Decided: July 31, 2012

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

ORDER

This 31st day of July 2012, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Thomas A. Morgan, filed an appeal from the Superior Court's March 29, 2012 order denying his second motion for sentence modification pursuant to Superior Court Criminal Rule 35. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior

Court's judgment on the ground that it is manifest on the face of the opening brief that this appeal is without merit.¹ We agree and affirm.

(2) The record before us reflects that, in August 1993, Morgan was found guilty by a Superior Court jury of two counts of Unlawful Sexual Intercourse in the First Degree and one count each of Unlawful Sexual Intercourse in the Second Degree and Kidnapping in the Second Degree. He was sentenced to a total of 36 years of Level V incarceration, to be suspended after 32 years for decreasing levels of supervision. This Court affirmed Morgan's convictions on direct appeal.²

(3) Since that time, Morgan has filed numerous motions for postconviction relief in the Superior Court, none of which have been successful. In February 2009, Morgan filed his first motion for sentence modification, claiming that his efforts at education and rehabilitation while in prison warranted a reduction in his sentence. This Court affirmed the Superior Court's denial of that motion.³

(4) In Morgan's appeal from the Superior Court's denial of his second motion for sentence modification, Morgan claims that a) the Superior Court erred when it denied his motion; b) his sentence should be overturned

¹ Supr. Ct. R. 25(a).

² *Morgan v. State*, Del. Supr., No. 386, 1993, Moore, J. (May 5, 1994).

³ *Morgan v. State*, Del. Supr., No. 94, 2009, Berger, J. (May 11, 2009).

because of various constitutional violations that allegedly occurred during his trial; and c) his sentence should be overturned because the Department of Correction's procedures under Del. Code Ann. tit. 11, §4217 are discriminatory and unconstitutional.

(5) Under Rule 35(b), a motion for reduction or modification of sentence made after 90 days will be granted “only in exceptional circumstances or pursuant to . . . §4217.” There is no evidence that the Superior Court committed error when it denied his motion. It is well-settled that efforts at rehabilitation do not constitute “extraordinary circumstances” justifying a sentence modification beyond the 90-day limit.⁴

(6) Because Morgan's second two claims were not raised in the Superior Court, they will be reviewed only if justice requires it.⁵ Constitutional claims of the type raised by Morgan are not properly brought in an appeal of a denial of a motion for sentence modification, but, rather, are properly brought in conjunction with a motion for postconviction relief filed in the Superior Court in the first instance. We, therefore, decline to consider Morgan's constitutional claims in this proceeding.

(7) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by

⁴ *Boyer v. State*, Del. Supr., No. 727, 2009, Jacobs, J. (May 18, 2010).

⁵ Supr. Ct. R. 8.

settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice